

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

AMENDMENTS TO 312 IAC 8-1-3, STANDARDS FOR ENTRANCE AND USE REQUIREMENTS OF FIREWOOD ON DNR PROPERTY))))	Administrative Cause Number 10-204A (LSA Document #11-421(F))
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**REPORT ON RULE PROCESSING, PUBLIC HEARING
WRITTEN COMMENTS, AND HEARING OFFICER ANALYSES AND
RECOMMENDATION REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration are proposed amendments to 312 IAC 8-1-3, which governs entrance into Department properties, to provide standards regarding entry with firewood and possession of firewood.

The Commission gave preliminary adoption to the rule amendments on March 15, 2011. As reported in the pertinent portions of the March 15 minutes:

Ginger Murphy, Assistant Director for the Division of State Parks and Reservoirs, presented this item. She said a proposed nonrule policy document was previously presented to the Advisory Council. "We're here to consider firewood management on our DNR properties" and "request your approval of the nonrule policy document and preliminary adoption of a proposed permanent rule amendment. If approved, the nonrule policy document would be implemented for the 2011 camping season. The "intent is to manage firewood on DNR properties" and protect our natural resources. "There are many types of pest and pathogens that have the potential to affect our forests in Indiana."

Murphy provided that the rule adoptions would require one of the following:

- (1) That the firewood be bundled and contain a Federal compliance stamp certifying that the firewood has been inspected.
- (2) That the firewood include a state compliance stamp certifying that the firewood has been inspected.
- (3) That the firewood be purchased from DNR's concessions.
- (4) That the firewood be kiln-dried construction lumber having been through a heat treating process.
- (5) That firewood brought from home have the bark removed.

Murphy said a quarantine of pests, issued by rule, would take precedence over the ability to bring firewood onto DNR properties. When this proposal was previously presented to the Advisory Council, a 25-mile radius limit was endorsed. A DNR survey has revealed, however, 83% of campers travel at least

100 miles to DNR property. As a result, the DNR is now recommending the 25-mile radius restriction be deleted and replaced with a requirement that bark be removed from any firewood. "Requiring that the bark be removed from firewood is a visible way to say, 'I brought my firewood from home, but it's clean.'"

Murphy said the survey also addressed the cost of firewood. "That's one thing we are certainly trying to be aware of." Approximately 68% of respondents supported the new rule for added protection our forest resources. She said the Division of Entomology and Plant Pathology was also supportive of firewood management. "This approach to managing firewood honors our mission to protect and manage our natural resources. At the same time, we believe it considers the interests and needs of the people who use our campgrounds and provides them a safe way to bring their firewood in."

Murphy recommended approval of the nonrule policy document and preliminary adoption of rule amendments 312 IAC 8-1-3.

Chairman Poynter asked Murphy, "How many people in your survey show up at a gate to a State park with firewood that had no knowledge of any firewood restrictions?"

Murphy responded "6% or 7%."

Director Rob Carter said, "I think, if I could add, that early on I heard from these folks, but it has quieted down a lot. Ginger and staff have done a great job of getting the message out to the properties, and the forestry division staff as well, and educating folks on what to do. The complaints are very minimal now. This was a thorough report that Ginger put together, and it's anything you wanted to know about firewood."

Ruch stated, "I'm not clear on one point. If the wood is 4½ feet, it's not considered firewood. Is there then no restriction?"

Murphy responded the vast majority of people who bring wood bring pieces smaller than 4½ feet. "If they are bringing scrap from home, it's going to be very, very small pieces that are really not going to be a problem. When you get past 4 ½ feet, I think [a restriction would begin] to impact loggers and their transportation of the wood."

Ruch continued, "But that could be brought into the park?"

Murphy responded, "Potentially, it could, but we rarely see it. From conversations with our property managers and our staff, we rarely see anything anywhere near that large. Most of it is cut and split so it will fit in their fire ring."

Ruch reflected, "What I potentially see here is somebody bringing in a log, one that doesn't fit into your regulations, and then cutting it onsite to burn."

Murphy replied, "I won't say that can't happen, but in my experience, that's something that's going to be really, really uncommon. I think we would probably end up at the campsite if somebody had a chain-saw running for something that was really large, but for a hand-saw, people may do it. It's less of an issue with small pieces with branches and slash than it is with the logs, but thank you for the question."

The Chair commented, "Good observation. The only thing I would suggest, because I do visit a lot of these parks, is to accompany this preliminary adoption process and the nonrule policy adoption to disseminate that and make sure there's a public awareness. Most people will comply if they know what the rules are. I'd encourage the state parks to be proactive in their reach to those who are coming to the parks and make people aware."

Thomas Easterly moved to approve the preliminary adoption of amendments to 312 IAC 8-2-3 regarding firewood on DNR properties, as well as to adopt the nonrule policy for firewood management on DNR properties. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

The “Notice of Intent” to adopt a proposed rule amendment was posted to the INDIANA REGISTER at 20110720-IR-312110421NIA on July 20, 2011. The notice identified Mike Mycroft, Department of Natural Resources, Division of State Parks and Reservoirs, as the “small business regulatory coordinator” for purposes of Indiana Code § 4-22-2-28.1.

As specified by Executive Order, proposed fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on July 21, 2011. In a letter dated September 21, 2011, Adam M. Horst, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

The Division of Hearings submitted the rule proposal to the Legislative Services Agency, along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”), on October 4, 2011. The Notice of Public Hearing was submitted to the Legislative Services Agency on October 5, 2011. On October 19, 2011, the following were posted to the INDIANA REGISTER: the text of the proposed rule at 20111019-IR-312110421PRA; the notice of public hearing along with the justification statement (IC 4-22-2-24(d)(3)) at 20111019-IR-312110421PHA; and the Economic Impact Statement at 20111019-IR-312110421EIA. Following receipt of an “Authorization to Proceed” from the Legislative Services Agency on October 5, 2011, the Division of Hearings caused a Notice of Public Hearing to be published by the Indianapolis Newspapers in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County Indiana, on October 12, 2011. In addition, the notice of the public hearing and a summary of the proposed rule changes were published on the Commission’s web-based electronic calendar.

A copy of the economic impact analysis for small business was submitted to the Indiana Economic Development Commission (the “IEDC”) on October 6, 2011. Eric P. Shields, Policy Director for the IEDC, reviewed the analysis. On November 7, 2011, Shields contacted Mike

Mycroft regarding calculation errors in the “Economic Impact Statement”. Mycroft agreed with Shields’s assessment and made two corrections. Table B-2¹ was amended to correct the multiplier “0.5 man hrs/month” to “0.5 days/month”, which resulted in a decrease of estimated average annual administrative costs to small businesses from \$720 to \$520. This correction is consistent with the corresponding narrative under heading “*Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance*”. The second correction is to language under the heading “*Estimated Total Annual Economic Impact on Small Businesses to Comply*”, which includes a miscalculation of the annual cost for photocopies (\$0.08 single-sided/ \$0.15 duplex). The calculation “\$40–\$75 per 250 copies (1,000 stamps/sales)²” as the estimated annual cost of photocopies was corrected to \$20–\$37.50. With the incorporation of these corrections, the IEDC reported favorably to the Commission by an email letter dated November 7, 2011. Later on the same day, the Commission’s Division of Hearings, by email, thanked the IEDC. The response stated in part: “Since you have commented favorably upon the agency’s fiscal analysis, and have suggested no alternatives, it will recommend that the Natural Resources Commission move forward with consideration for final adoption.” The IEDC’s comments were posted to the Commission’s Website on November 7, 2011 at <http://www.in.gov/nrc/2348.htm>, and were also made available at the public hearing.

2. PUBLIC HEARING AND WRITTEN COMMENTS

a) Public Hearing

On November 16, 2011, the public hearing was convened as scheduled by Stephen Lucas of the Division of Hearings. In attendance from the Division of State Parks were Ginger Murphy, Division of State Parks and Reservoirs’ Assistant Director for Stewardship, and Mike Mycroft, Resource Management Coordinator; Dan Ernst, Assistant State Forester with the Division of Forestry; and Phil Marshall, State Entomologist with the Division of Entomology and Plant Pathology.

¹ 20111019-IR-312110421EIA , pp. 1, 2.

² 20111019-IR-312110421EIA , p. 2.

b) Written Comments

Written comments were received though the Commission's online comment form accessible at <http://www.in.gov/nrc/2377.htm>. The comment period closed end of day November 21, 2011.

Comments were submitted as follows:

<p>Commentor Name bruce griner Commentor County 29 Commentor State IN Commentor City carmel Commentor Organization Commentor Email Email Commentor Comment this reg must stay in place , keeping the ash b in ck is our resp. as a avid outdoorsman and native hoosier I believe in passing on a good resource to our children and grandchildren so they can enjoy the great outdoors Time stamp 07/30/2011 02:43:19 AM</p>
<p>Commentor Name John Kevin Haendiges Commentor County 31 Commentor State IN Commentor City Ramsey Commentor Organization Commentor Email Email Commentor Comment I approve of this rule as written. Time stamp 08/11/2011 05:47:51 PM</p>
<p>Commentor Name Jennifer Creed Commentor County Out of State Commentor State MO Commentor City Mountain Grove Commentor Organization Ozark Mountain Firewood, Llc Commentor Email Email Commentor Comment while requiring the USDA seal is a logical idea on the suface, if you contact the USDA Plant Division you will see that only facilities that are located IN an infested are can be certified. So, a facility like mine, that is far away from any infestation cannot obtain a certification because, as the USDA has told me repeatedly, there is nothing to certify against. All we can do is list our county and/or city and state on the labels so that the origin is known. To me, this is just seems unfair to those of us that are not at risk. It is like saying you want product that is from a known infestation area. Time stamp 09/30/2011 12:29:59 PM</p>
<p>Commentor Name Ryan McDuffee Commentor County 47 Commentor State IN Commentor City Springville Commentor Organization Commentor Email Email Commentor Comment I support this rule adjustment because there is still a clause in there allowing some wood to be brought in without having to pay an arm and a leg for comercial firewood Time stamp 10/16/2011 04:01:16 PM</p>

3. HEARING OFFICER ANALYSES AND RECOMMENDATION REGARDING FINAL ADOPTION

The proposed rule seeks to reduce the likelihood the movement of firewood will provide a vector for the spread of exotic species of insects that may directly, or indirectly through the spread of new diseases, have a devastating effect upon native trees or other plants and animals. Although the management initiative has value beyond properties administered by the Department of

Natural Resources, the restrictions are limited to entry onto a DNR property and is believed well within the authority of the Natural Resources Commission for rule adoption under IC 14-10-2-4, and, more particularly, IC 14-11-2-1.

The Commission's March 15 minutes, cited previously, underline the importance of DNR efforts to communicate to the public the need for the regulation. The proposed rule has foundations in a voluntary initiative that was highlighted by billboards and other media.

Only four public comments were received regarding the rule proposal. Three of these were supportive of the draft given preliminary adoption.

The single expression of concern was measured and came from Jennifer Creed of Ozark Mountain Firewood, LLC in Missouri. The concern was directed to how the U.S. Department of Agriculture structures certifications. Phillip T. Marshall, State Entomologist, offered a response in a November 30, 2011 email. The email states in part:

The complaint...has been presented many times before to Aphis [of the U.S. Department of Agriculture] by the firewood task force and the plant board members. So this is not a new complaint.

Marshall reflected his understanding that Aphis does not believe it has the ability, outside an affected area, to provide certification of "firewood because Aphis has to certify related to and under a regulatory situation. Only one county in Missouri is aphis regulated for" emerald ash borers. "If the firewood business was in that county, Aphis would certify."

Marshall added his belief that Aphis is developing a federal regulation to address Creed's concerns. Successful completion of a federal regulatory change might improve flexibility of the proposed Indiana rule in some contexts, but the Commission has no authority to control a federal agency's exercise of authority, particularly in an Interstate context. Creed's concern appears to have merit but is outside Commission control and not a reason to reject final adoption of the proposed rule.

The DNR erred in analyzing the adverse economic impact to small businesses. The Indiana Economic Development Commission identified and corrected the error. IEDC approved DNR's analysis with the correction. Particularly since the DNR analysis overstated rather than understated the economic impact, the error should not form a basis for the rule to be disapproved.

The hearing officer recommends the proposed rule be given final adoption as proposed and attached in Exhibit "A".

Dated: December 7, 2011

Stephen L. Lucas
Hearing Officer

Exhibit "A"

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #11-421(F)

DIGEST

Amends 312 IAC 8-1-3, which governs entrance into DNR properties, to provide standards regarding entry with firewood and possession of firewood. Effective 30 days after filing with the Publisher.

312 IAC 8-1-3

SECTION 1. 312 IAC 8-1-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-1-3 Entrance and use requirements; firewood

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 3. (a) The commission may, in a master plan or by resolution, establish any of the following:

(1) Fees for:

(A) entrance into a DNR property; or ~~for~~

(B) a particular use within a DNR property.

(2) Entrance and exit sites for a DNR property.

(3) Conditions upon or prohibitions against particular uses within a DNR property or a portion of a DNR property.

(b) In addition to any requirement established under subsection (a), a person may bring firewood into or possess firewood on a DNR property only if the firewood is one (1) of the following:

(1) Bundled and accompanied by a federal compliance stamp issued by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS).

(2) Bundled and accompanied by a state compliance stamp issued by the department's division of entomology to the firewood vendor from whom the wood was purchased.

(3) Inspected and certified by the department's division of entomology and plant pathology and transported for sale or distribution into a DNR property by either of the following:

(A) A state-certified concessionaire.

(B) The department.

(4) Consisting of kiln-dried construction lumber.

(5) Consisting of logs, timber, or another part of a tree with all bark removed.

(c) The following definitions apply throughout this section:

(1) "Firewood" means kindling, logs, boards, lumber, timber, and any part of a tree that is in a form and size appropriate for use as fuel. Logs cut into lengths at least four and one-half (4 1/2) feet long are not firewood.

(2) "Kiln-dried construction lumber" means processed boards cut and dried to remove all bark.

(Natural Resources Commission; 312 IAC 8-1-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; readopted filed Mar 25, 2010, 2:58 p.m.: 20100421-IR-312100037RFA)